

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

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Refer Reply To:
CC:PSI:03
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Date:
February 25, 2010

LEGEND

Trust =

Trustee =

Year1 =

Year2 =

X =

Dear :

We received a letter dated August 27, 2009 submitted on behalf of Trust by its authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 642(c)(1) of the Internal Revenue Code for Year1. This letter responds to that request.

FACTS

The information submitted provides that Trust made a charitable contribution in Year2 in the amount of X. Trustee intended to make an election to treat the charitable contribution as paid in Year1. However, Trustee failed to make the election.

LAW AND ANALYSIS

Section 642(c)(1) provides that in the case of an estate or trust (other than a trust meeting the specifications of subpart B), there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by § 170(a), relating to

deduction for charitable, etc., contributions and gifts) any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in § 170(c) (determined without regard to § 170(c)(2)(A)). If a charitable contribution is paid after the close of such taxable year and on or before the last day of the year following the close of such taxable year, then the trustee or administrator may elect to treat such contribution as paid during such taxable year. The election shall be made at such time and in such manner as the Secretary prescribes by regulations.

Section 1.642(c)-1(b)(1) provides that for purposes of determining the deduction allowed under paragraph (a) of this section, the fiduciary (as defined in § 7701(a)(6)) of an estate or trust may elect under § 642(c)(1) to treat as paid during the taxable year (whether or not such year begins before January 1, 1970) any amount of gross income received during such taxable year or any preceding taxable year which is otherwise deductible under such paragraph and which is paid after the close of such taxable year but on or before the last day of the next succeeding taxable year of the estate or trust. The preceding sentence applies only in the case of payments actually made in a taxable year which is a taxable year beginning after December 31, 1969. No election shall be made, however, in respect of any amount which was deducted for any previous taxable year or which is deducted for the taxable year in which such amount is paid.

Section 1.642(c)-1(b)(2) provides that the election under § 1.642(c)-(b)(1) shall be made not later than the time, including extensions thereof, prescribed by law for filing the income tax return for the succeeding taxable year. Such election shall, except as provided in § 1.642(c)-1(b)(4), become irrevocable after the last day prescribed for making it. Having made the election for any taxable year, the fiduciary may, within the time prescribed for making it, revoke the election without the consent of the Commissioner.

Section 1.642(c)-1(b)(3) provides that the election shall be made by filing with the income tax return (or amended return) for the taxable year in which the contribution is treated as paid a statement which (i) States the name and address of the fiduciary, (ii) Identifies the estate or trust for which the fiduciary is acting, (iii) Indicates that the fiduciary is making an election under § 642(c)(1) in respect of contributions treated as paid during such taxable year, (iv) Gives the name and address of each organization to which any such contribution is paid, and (v) States the amount of each contribution and date of actual payment, or if applicable, the total amount of contributions paid to each organization during the succeeding taxable year, to be treated as paid in the preceding taxable year.

Section 301.9100-1(c) provides that the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad),

under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that except as provided in §§ 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) Requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service (IRS); (ii) Failed to make the election because of intervening events beyond the taxpayer's control; (iii) Failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) Reasonably relied on the written advice of the Internal Revenue Service (IRS); or (v) Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

CONCLUSION

Based on the information submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, Trust is granted an extension of time for 60 days from the date of this letter to file an election pursuant to § 1.642(c)-1(b) for Trust's Year1 taxable year in addition to filing amended returns for Year1 and Year2. The amended returns must be filed within the 60 day period with the service center where Trust files its returns. A copy of this letter should be attached to the amended returns.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Trust's authorized representative.

Sincerely,

/s/

Curt G. Wilson
Associate Chief Counsel
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for Section 6110 purposes